

MINUTES OF THE HOUSE TRANSPORTATION.

The meeting was called to order by Chairperson Gary Hazylett at 1:35 p.m. on February 19, 2001 in Room 519-S of the Capitol.

All members were present except:

Committee staff present:

Bruce Kinzie, Revisor
Hank Avila, Research
Ellie Luthye, Committee Secretary

Conferees appearing before the committee:

Representative Bob Grant
Representative Sharon Schwartz
Steve Sloan, Midwest Mineral
Steve Heft, Heft & Son LLC
Woody Moses, Kansas Ag Producers
Bob Totten, Kansas Contractors
Butch Spray, Venture Corporation, Garden City, Kansas
R.J. Koreen, Andrews Asphalt
Randy Allen, Kansas Association of Counties
Doug Wareham, Kansas Fertilizer & Chemical Association
Tim Ohlde, private citizen
Todd Johnson, Kansas Livestock Association
Ken Gudenkauf, Assistant Bureau Chief, Traffic Engineering, KDOT

Others attending:

See attached list

HB 2369 - cities and counties, paving materials, prohibiting the sale thereof

Chairman Hayzlett opened hearings on **HB 2369** and called on Representative Grant as the first proponent. He told the committee that while the practice of selling rock to private individuals or contractors by the county is not widespread he felt this bill was necessary to curtail such activity before it becomes a bigger problem. (Attachment 1)

Steve Sloan, Midwest Minerals, spoke of some of the competitive advantages county governments have over his company when they engage in selling crushed stone products and redi-mixed concrete to customers in the six most southeastern counties his company serves. He continued the law, through "home rule" provisions, allows counties to enter the area of private enterprise through public facilities and funds if they can show they are fulfilling a public purpose. He said virtually anything could be deemed to serve a public purpose so therefore, any governmental agency could sell or give away any product or service in direct competition with private enterprise. (Attachment 2)

Steve Heft, Heft & Sons, LLC, stated in their sparsely populated area of the state they depend upon a wide and diverse customer base in order to provide quality paving materials at a reasonable cost. He provided letters supporting his claim that the various counties have violated one of the basic theories of government by entering the private sector and competing with them for the sale of asphalt, rock, sand, gravel and concrete. (Attachment 3)

The Chair next called on Woody Moses, Kansas Aggregate Producers' Association, who told the committee this bill was introduced to address a growing problem in the Kansas construction materials industry, the disappearance of markets. The development of "home rule" has led to conflicting opinions about what local government can do in pursuit of the "public purpose". He concluded they support **HB 2369** which would prevent the sales of paving materials by local government. (Attachment 4)

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE, Room 519-S of the Capitol at 1:35 p.m. on February 19, 2001.

Bob Totten, Kansas Contractors Association, said their organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest. He said the bill addresses several concerns their organization had regarding laws pertaining to governmental entities contracting for bid or doing work with their own forces. He listed several reasons why they supported **HB 2369**. (Attachment 5)

Butch Spray, Venture Corporation, said we have an economic system characterized by private or corporate ownership of the tools of production in a competitive and free market and that counties should not be allowed to sell asphalt mix, crushed stone, etc. to other governmental agencies or private annuities. He attached several articles to reinforce his arguments for a competitive market. (Attachment 6)

R.J. Koreen, Andrews Asphalt & Construction, stated his company had been concerned with the participation of a governing, political, and taxing authority in the free market of paving services and asphalt production for some time. He continued when a taxing authority imposes itself in production or in providing a service that the private sector can do, they have advantages that are not afforded companies like theirs. He asked support for **HB 2369**. (Attachment 7)

There being no other proponents Chairman Hayzlett called on Randy Allen, Kansas Association of Counties, who spoke in opposition to **HB 2369**. It was his interpretation this bill would prohibit cities and counties from selling, or otherwise providing, various materials to any other city, county, private person or private entity. He stated that among the 105 counties, the vast majority of counties do not routinely sell crushed rock, gravel or asphalt to other counties or to cities, and probably even few sell paving materials to private persons or private entities. He then listed several concerns they had with the bill. (Attachment 8)

Don Moler, League of Kansas Municipalities, presented written testimony. (Attachment 9)

Following questions from the committee, Chairman Hayzlett closed hearings on **HB 2369**.

HB 2277 - operation of all terrain vehicles used for agricultural purposes upon highways

Chairman Hayzlett opened hearings on **HB 2277** and called on Doug Wareham, KFCA, to present testimony in support of this bill. He stated ATV's have been used by retail fertilizer and ag chemical operations, agronomists, crop consultants and field scouts to identify soil fertility needs, inspect for plant diseases, take samples of insect infestations and have even been used to spot-apply crop protection chemicals. It is their opinion that these vehicles have and will continue to serve as "implements of husbandry" and should not be treated any differently from other implements of husbandry. He concluded ATV's are not a recreational vehicle, but are instead precision farming equipment that should be classified as an "implement of husbandry". (Attachment 10)

Tim Ohlde, Ohlde Cattle Company, said a large percentage of his farm/ranch is located along the highway in close proximity to their headquarters. They find it necessary to drive ATV's on the "right of way" to perform daily operations in a timely and efficient manner and find their use saves \$100 a day in labor, fuel and machinery costs. (Attachment 11)

Representative Sharon Schwartz read testimony from Leo Schwartz, owner of Pork Chop Acres, Inc. in Washington, Kansas. In his testimony he states ATV's are an essential piece of equipment which they use for scouting crop fields; checking for insects, weeds, planting skips as well as pulling a sprayer to actually spot spray weed breaks in crops and fence rows. They also are used to check cattle, drive cattle to and from forage areas, check fences, haul feed as well as fencing supplies. He concluded they are used exclusively as vehicles of husbandry and asks for support of **HB 2277**. (Attachment 12)

The next proponent to speak was Todd Johnson, Kansas Livestock Association. He said with the changing agriculture farmers face today, and the way they use different tools and technology now, it is important to classify ATV's as "implements of husbandry" and allow them to legally operate on highway right-of-ways, when used for agricultural purposes. (Attachment 13)

Following questions by the committee to the proponents of **HB 2277**, Chairman Hayzlett called on Ken

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE, Room 519-S of the Capitol at 1:35 p.m. on February 19, 2001.

Gudenkauf, Department of Transportation, who spoke in opposition to this bill. He said the major concern of the Department is for the safety of these vehicles operating incidentally on the highways. He said most implements of husbandry are large and fairly visible when operated on the highways, however, the visibility of the all-terrain vehicles creates a safety concern because of their very low profile. (Attachment 14)

Chairman Hayzlett closed hearings on **HB 2277** following questions from the committee.

Due to time restraints Jim Keating of the Safe Kids Coalition was asked to return to the committee on Tuesday, February 20th to give his report on the low rating Kansas received concerning child seat belt safety.

HB 2191 - license plates for Ancient Arabic Order, Nobles of the Mystic Shrine of North America

Chairman Hayzlett opened the floor for discussion and final action on **HB 2191**. Representative Levinson made a motion to take HB 2191 off the table, seconded by Representative Humerickhouse and the motion carried. Representative Powell made a motion to pass HB 2191, as amended, seconded by Representative Levinson and the motion carried.

Chairman Hayzlett adjourned the meeting at 3:20 p.m. The next meeting of the House Transportation Committee will be Tuesday, February 20th in Room 519-S.

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: February 19, 2001

NAME	REPRESENTING
Ken Gudenkauf	KDOT
Bill Watts	KDOT
Tim & Trudy Ohlde	Ohlde Cattle Co
Judd Johnson	KLA
Sharon Schwartz	Representative #106
STEVE HEFT	HEFT + SONS LLC
DAYLE HEFT	" " "
CHRIS SPRAY	VENTURE CORP.
BUTCH SPRAY	VENTURE CORP
Cosky Beachner	Beachner Co.
Andy Shaw	KMCA
Tom Whitaker	Ks Motor Carriers Assn.
Mike Ohrt	PiAegar-Smith
Betty J. Snyder	self
Melinda Glavanis	self
Dan HARNEN	Riley County
Larry Macha	SE Kan Asphalt Serv.
Trista Bendles	Governor's Office
JIM KEATING	KANS. SAFE KIDS

HOUSE TRANSPORTATION COMMITTEE GUEST LIST

DATE: 2-19-01 (continued)

NAME	REPRESENTING
Sarah Thummel	Kansas Aggregate Producers' Assn
Steve Sloan	Midwest Minerals
Vickie Miller	KCC
Mark A. Goodale	KHP
Marvin Zielsdorf	Hamm Companies
Steve Zuehl	Ritchie Paving
William Girard	APAC/shears
Edmund L. Moss	Ks. Agg Prod Assn.
W.D. Neal	BRB Contractors, Inc.
Richard Egan	BRB Contractors, Inc.
Ed Borzeng	KHP
Bob Totten	Kansas Contractor
John D. Pinegar	KLP G
Sheila J. Walker	KDER-DMV



TOPEKA

HOUSE OF
REPRESENTATIVES

ROBERT "BOB" GRANT
REPRESENTATIVE, 2ND DISTRICT
MOST OF CRAWFORD COUNTY
AND PART OF CHEROKEE AND
NEOSHO COUNTIES
407 W. MAGNOLIA
CHEROKEE, KANSAS 66724

COMMITTEE ASSIGNMENTS
MEMBER: BUSINESS, COMMERCE AND LABOR
FINANCIAL INSTITUTIONS
INSURANCE
EDUCATION AND LEGISLATIVE
BUDGET COMMITTEE
SPECIAL CLAIMS
STATE BUILDING AND CONSTRUCTION

FEBRUARY 19, 2001

TESTIMONY ON HOUSE BILL 2369.

CHAIRMAN HAZLETT AND MEMBERS OF THE TRANSPORTATION COMMITTEE:

I WOULD LIKE TO THANK YOU FOR HAVING A HEARING ON HOUSE BILL 2369 AND GIVING ME THE OPPORTUNITY TO TESTIFY IN FAVOR OF THIS LEGISLATION.

I SEE A PROBLEM ON THE HORIZON THAT COULD CREATE A LARGER PROBLEM IF NOT STOPPED NOW.

THERE ARE SOME COUNTIES THAT HAVE PURCHASED THEIR OWN ROCK CRUSHING EQUIPMENT AND ARE TRYING TO SAVE MONEY FOR THE CITIZENS BY CRUSHING ROCK FOR USE ON THE ROADS WITHIN THE COUNTY. I SEE NOTHING WRONG WITH THIS. WHAT IS HAPPENING IN SOME SCATTERED INSTANCES IS HOWEVER, THAT ROCK HAS BEEN SOLD TO PRIVATE INDIVIDUALS OR CONTRACTORS. I FEEL STRONGLY THAT COUNTIES SHOULD NOT BE IN COMPETITION WITH PRIVATE BUSINESSES.

THESE BUSINESSES PAY TAXES TO THE VERY ENTITIES THAT THEY ARE COMPETING AGAINST. COMPETING ON A LEVEL PLAYING FIELD IS SOMETHING MOST BUSINESSES EXPECT.

I WOULD BE THE FIRST TO ADMIT THIS PROBLEM IS NOT WIDESPREAD, BUT I FEEL THIS LEGISLATION WILL CURTAIL SUCH ACTIVITY BEFORE IT BECOMES A BIGGER PROBLEM.

I WOULD STAND FOR QUESTIONS.

MIDWEST MINERALS, INC.

TESTIMONY

Date: February 19, 2001
By: Steve Sloan, President
Midwest Minerals
Regarding: House Bill 2369
Before: The House Committee on Transportation

Good Afternoon Mr. Chairman and Members of the Committee:

My name is Steve Sloan. I am president of Midwest Minerals, Inc., Pittsburg, Kansas. Midwest Minerals is a 54-year old company that sells crushed stone products and redi-mixed concrete to customers primarily in the six most southeastern counties of Kansas. I am here today to speak in favor of House Bill 2369.

I would like to tell you a little bit about a few of Midwest Minerals toughest competitors in the marketplace. These entities have a few competitive advantages over Midwest Minerals' 80 employee team.

1. Our competition does not pay taxes.
2. Our competition utilizes equipment that is paid for solely by Midwest Minerals and thousands of other taxpayers.
3. Our competition utilizes labor that is paid for solely by Midwest Minerals and thousands of other taxpayers.
4. Our competition produces no profit and loss statement and is not aware if their expenditures of taxpayers funds are truly profitable.
5. Our competition has production capacity far in excess of its demand. To justify their existence, our competition gives their excess capacity away free of charge to selected private entities or sells the product at prices below the production costs of private companies in the marketplace.
6. Our competition is revered in the newspapers because of their dispersals of their product without charge. The taxpayer recipients of these products have actually paid in advance for their gift without fully realizing the cost of the product they are receiving.

The competitors of which I speak are County governments. Arguably, the law through "home rule" provisions allows counties to enter the area of private enterprise through public facilities and funds if they can show they are fulfilling a public purpose. However, at the same time, under no conditions may the county engage in any activity through its home rule powers that serves a "private purpose". Here lies the problem. What serves a public purpose? The answer to that is basically anything. Let me give you an example...

As you can see, virtually anything can be deemed to serve a public purpose. So therefore, any governmental agency can sell or give away any product or service in direct competition with private enterprise. However, the question is, "Is it fair and just?"

When home rule was established in 1974, the legislature had no intention of putting government in competition with private enterprise, yet here we are today discussing the issue. Where does it stop? Will government begin operating repair shops, trucking companies, welding shops, or become general contractors for the public? Unfortunately, that is where we are headed. The bottom line is to ask yourself how you would feel as a taxpayer if your tax dollars would go to support government operations that entered your business arena. Not to mention they gave their product or service away for free. You can only imagine the feeling of frustration and injustice you would feel. Well that is the feeling many of us in this room live with day to day. Knowing that the only possibility to right this wrong is through legislative avenues. Thank you for your time and consideration. I will be happy to answer any questions you have.

House Transportation Committee
February 19, 2001
Attachment 2

Developer wants more city help

By Ray Nolting *Dick*
Parsons Sun

Parsons city commissioners are thinking about taking a larger role in a housing development project west of town on Gabriel.

Jack Kynion is developing 28 acres in the 4400 block of Gabriel, on the south side, into building lots for homes. The new addition, to be called Country Meadow Estates, will be developed and annexed in stages.

Kynion, his wife, and his son, Jack II, met with commissioners Thursday to discuss the development. Commissioners were meeting to review the agenda for Monday's meeting.

Kynion said he needs to fill in some gaps in order to complete development plans.

Jack Kynion II said his father is within \$30,000 to \$40,000 of being able to do the housing project. He wondered if the city could increase its participation in the development.

So far, the city has been willing to supply materials for water and sewer service, and the county

would supply rock for the roads. The developer would have to seek bids for actually installing the water and sewer lines and building streets.

The city also would contribute by doing the engineering and inspection work and deferring principal payments on bonds.

City Manager Glen Welden said this would add up to about 46 percent of the total development cost.

Jack Kynion II said some developers in the area — he mentioned Iola and Independence — don't have the money to complete projects because installing infrastructure is so costly. Selling the lots and building homes takes several years, too.

"The problem that's taking place is development just isn't happening," Jack Kynion II said.

Kynion said he considered housing an economic development issue. Property taxes on houses in the addition would supply income to the city and other taxing districts, he said.

Chuck Brown, one of the city's co-directors of the economic development department, said housing is a supply and demand issue, too. Now,

there's not much growth in the area so demand is down.

When Tyson Foods was considering a plant in Parsons, city leaders began to look at the housing shortage, Brown said. The city came up with a program to help developers by supplying materials for infrastructure.

Welden said the city doesn't want to pay the majority cost of the development.

Commissioner Bob Bartelli said the commission wants to make housing development work for both the developer and the city. He did not know if the city would be willing to contribute more than 50 percent, however.

Kynion said he wanted to keep the cost of the special assessments — the cost of installing water and sewer lines and roads — down for the homeowners to make the development attractive.

Bartelli said he would be willing to up the city's contribution to 50 percent of the development costs, which would be about \$121,500 for the Kynion development. He said the city has contributed that amount to previous housing projects.

SUNDAY'S FORECAST: MOSTLY SUNNY AND WARMER WITH THE HI

County helps cities

CHANUTE — The city of Chanute will save thousands of dollars for its street projects thanks to the Neosho County Commission.

The county will provide more than 40,000 tons of rocks from the county quarry free to all the county's cities. The cities must haul the rock to the storage sites; Chanute is now hauling 10,000 to 15,000 tons.

It is paying \$2 a ton for the hauling by SE-KAN Asphalt Services. In the past, the city paid \$6 per ton for delivered rocks.

The city is considering taking 24,000 tons of the rock, a savings of \$96,000.

HEFT & SONS, L.L.C.

P.O. BOX 326 GREENSBURG, KS 67054 (316) 723-2495

TESTIMONY

Date: February 19, 2001
By: Steve Heft, President
Kansas Aggregate Producers' Association
Regarding: House Bill 2369
Before: The House Committee on Transportation

Good Afternoon Mr. Chairman and Members of the Committee:

My name is Steve Heft, partner with my father and brother in Heft & Sons, L.L.C., Greensburg, Kansas, and the President of the Kansas Aggregate Producers' Association. Our company was organized shortly after World War II by my grandfather Russell Seacat as Seacat Sand. Initially providing sand, we now produce asphalt, sand, gravel, and concrete in Kiowa and surrounding counties. In our sparsely populated area of the state, we depend upon a wide and diverse customer base in order to provide quality paving materials at a reasonable cost. I am here before you today to discuss with you a very real, and very important problem.

Imagine, if you will, that you are farming 160 acres of ground, and that you routinely sell your crop each year, making a fair living. Then one year you harvest your crop, and take it to the local elevator for sale, only to be told by the manager, "No thank you, the county has already provided us all the crops we need." How can this be?

Well, let us assume that in order to feed local inmates at a lower cost, the county decided to buy 160 acres and grow its own food. Now let's take this one step further and assume the county realizes it only needs 60 acres to feed the inmates, so it decides to sell the excess thus depriving you of a market and a living. Doesn't this seem a bit farfetched?

Yes it does, but as farfetched as it sounds, this actually happens everyday in the asphalt, rock, sand, gravel and concrete business. Why? Because, while counties would never dream of farming, selling fuel, or providing income tax preparation services, they seem to think the selling of paving materials is fair game. And in doing so they have violated one of the basic theories of government by entering the private sector. This is especially true in Kansas where a number of conflicting opinions regarding serving the "public purpose" and "home rule" have lead to some very loose interpretations, which include entering into competition with local businesses.

In recent years, this trend has accelerated to the point that almost 600,000 tons of rock alone are produced by four separate counties in Southeast Kansas. As these counties only need, by our best estimates 250,000-300,000 tons of rock for their own use, they have literally flooded the market with excess rock. This has in turn set off a virtual stampede to give rock away or in some more sublime instances (Neosho County) actually offer it for sale at one price and then cut that price (see attached article). Or in other cases, as in Bourbon County, where city and county owned asphalt plants compete with each other.

We think it is time for this activity to end. As you can see, HB 2369 is a simple bill with a clear directive to local government to stay in the public sector. Adoption of this bill will provide a clear bright line for all to see and observe. We urge your support of HB 2369. Thank you for your time and consideration.

House Transportation Committee
February 19, 2001
Attachment 3

December 15, 2000

GEORGE E. NETTELS, JR.
CHAIRMAN OF THE BOARD

Letter to the Editor
Chanute Tribune
15 N. Evergreen
Chanute, KS 66720


I read with interest a recent report on the Neosho County Commission meeting at which the commissioners agreed to sell 6000 tons of crushed stone at \$5.25 per ton to a contractor unless the contractor "hollered" too much – then they'd sell it for \$5.00 per ton. "Holler" a little bit and put \$1500 in your pocket – wouldn't you?

A more basic issue was raised however in that is it right to enter the arena of private commerce utilizing public facilities and funds. The county commission is in effect using public equipment and labor competing with county taxpayers, private companies engaged in rock crushing business. Recently these same commissioners agreed to give the City of Chanute 40,000 tons of crushed stone. The rationale for these activities arises from the fact that the county had rock crushing capabilities far in excess of the county's needs and therefore to sustain a stable work force and provide continuous employment the commissioners look for avenues to utilize excessive rock crushing capacity.

There's something basically wrong with the county officials using taxpayer's facilities to compete with taxpayers. The law allows this through "home rule" provisions, but is it right. Any governmental agency can sell or give away any service in competition with private enterprise if they choose to, but is it right. Fairness says it's not.

We, of course, have a private interest in these matters since the contractor in question first got a quotation for his needs from us. Further, we have two quarry locations in Neosho County, but quite aside from our private interest is the question, is it right. How would you feel as a county taxpayer should the county and its tax-supported facilities decide to enter your business arena?

We're going to make a major effort to stop these kinds of activities through whatever means are available and we hope that fair-minded citizens of Neosho County will concur with our thinking.



George E. Nettels, Jr.
Chairman
Midwest Minerals, Inc.

Briefly

SEK high school students to join voices in concert

The voices of 180 students from across southeast Kansas will blend together tonight in a concert to be given in the Bowls Fine Arts Center, Iola.

Students from 35 to 40 high schools auditioned in front of a panel of judges for a spot on the risers for the SEK All-District Choir. Among them are 17 students from Chanute High School. Those students are:

Sopranos Kristin Cotton, Joni Képley and Angie Umbarger; altos Tanika Bossell, Leslie Collins and Sandra Klingensmith; tenors Trevor Adwell, Allen Arthur, Masson Craft, Cody Peterson, Tyler Seibel and Nathan Woodard; basses Luke Johnson, Andrew Powell, Jacob Williams, Brent Wilson and Bobby Wood.

The students will rehearse all day under guest clinician Marles Preheim, retired director of choral studies at Bethel College. During the day, the students will be excused individually to audition for state choir.

The concert is to begin at 7 p.m. in the fine arts center. There is an admission charge.

Atchison Castings cutting 220 jobs

KANSAS CITY, Mo. (AP) — An Atchison, Kan., company is closing two of its casting foundries in an effort to cut financial losses.

Atchison Casting Corp. will close one of three steel foundries in its Pennsylvania Foundry Group and one of two iron foundries in its PrimeCast division in Beloit,

County appoints attorneys; signs lease-purchase agreement

Mikulka, Clover contracted for public defense in court cases

Gary Engel
Tribune writer

County commissioners appointed attorneys for children and certain groups of indigent persons when they met Friday. They also signed a lease-purchase agreement with Martin Tractor Co. of Chanute for the new track loader at the landfill and discussed how to price rock to a dirt work contractor for the new jail/law enforcement center.

They also heard from a property tax payer about an assessment which saw his tax bill for this year jump from approximately \$14 to more than \$147 for a parcel of land.

Two Chanute attorneys were contracted for public defense. Tom Mikulka was appointed attorney ad litem to represent the interests of children in court proceedings, and Tim Clover will be the defender for indigent persons on the bulk of misdemeanor cases, as well as traffic and fish & game

matters.

The lease-purchase arrangement sees the county paying Martin Tractor \$90,000 and then financing the remaining \$67,000 on the new track loader for the county landfill.

Also, the commission instructed County Engineer Frank Young to present a price of \$5.25 per ton to CJ2 Excavating, Inc., of Crestline for it to purchase rock from the county for the jail project.

Young said CJ2 believes county road rock is of the quality that can be used for base work on the new jail. The company was presented a price of \$5.50 elsewhere, said Young.

"I think we can shut down other operations" to haul the material for CJ2, Young said. He thought it would take four to five days to truck the projected 6,000 tons — half for the building's foundation and the remainder for the parking lot.

The group discussed possibly pricing the the gravel at \$5, but decided on the slightly-higher figure.

"I want to put some money back into the taxpayers' pocket instead of it going out," said Commissioner Donnie Yarnell.

The group decided that if CJ2's objections on the \$5.25 price were too strident, the price could be lowered to \$5 per ton.

Related to the dirt work at the site, the commission approved a \$116,750 bid from CJ2, which will begin moving dirt Monday.

Also approved was the sale of rock to the City of Erie to assist with its sewer improvements.

The commission approved the \$9,000 purchase of a dual-purpose (defense/drug detection) dog from Elliott's Police Canine, Hutchinson. The money is in the county's special law enforcement fund.

Commissioners approved a contract with Chanute-based Community Planning & Development, which is operated by Robert Hosack. Its main mission is to be the administrative consultant for the Micro-Loan Fund grant. County Counsel Dan Creitz noted that the contract contains a clause allowing the county to bow out at any time with 30 days' notice.

Young reported that KDOT had informed the county that the more than \$741,000 bid submitted by the Dufur Co. of Waverly was "acceptable" for replacement of the two bridges on old U.S. 169 North near Ash Grove Cement Co.

The bid was about \$60,000 less than KDOT had estimated.

Neosho County's share is some \$163,000. Young said a partial payment will be made to Dufur before Jan. 4, with 30 days following to pay off the balance.

County Road Supervisor Larry Dillinger will begin taking steps to lower the railroad crossing on Gray Road between 190th and 200th roads at the request of Commissioner Hugo Spieker, who said that vehicles travel over the crossing at high speed in an attempt to become airborne, "and somebody is going to get killed."

The crossing goes over the old AT&SF line which ran from Chanute to Erie and is southeast of the Chanute landfill.

After talking about the unsafe crossing matter, discussion turned to illegal dumping which is taking place just outside the boundaries of the landfill. Much of the material is leaves and brush.

"I don't understand it," Spieker said of the illicit dumping. "The city's leaf (and brush) collection site (on Ford Road southeast of town) is open all the time, and it's free."

The commission invited Steve Fickel of Chanute to return next

week to discuss his tax bill and appraisal with County Appraiser Bob Kline. Friday marked a rare absence from the courthouse for Kline.

Fickel wondered about the county's methodology for appraising taxes after his bill went from about \$14 to almost \$148 in a year for a parcel of land, a lot where there are no buildings or other improvements. The statement shows an appraisal increase of more than 800 percent.

Fickel said an acquaintance needed a place to stockpile some concrete posts, so he was keeping them at Fickel's.

The lot has "now been classified for business use," said Fickel. "It's the other man's income" — not his.

He showed a copy of the tax bill for a similar open plot adjacent to his. It's for \$13.88.

Commissioners said the appraiser's office is bound by a plethora of state regulations regarding appraisal methods. They encouraged Fickel to return and discuss the matter with Kline next week, and he said he would do so.

The commission will meet on Thursday for its next session due to the county employees' dinner being scheduled that day.

Skee break



School board to review three charter proposals at meeting on Tuesday

State expected to approve 15 next year

Connie Woodard
Tribune writer

The school board will look at suggestions for how a charter school could operate in Chanute when it meets in regular session Tuesday night.

The meeting has been moved

The state is expected to approve 15 new charter schools in Kansas for 2001-2002.

In other business Tuesday night, the school board will hear what progress has been made on a study of district buildings or facilities.

A committee has met several times to discuss alternative uses for the schools, space needs

A district committee of staff, teachers and community mem-

ASH GROVE MATERIALS CORP.



8900 INDIAN CREEK PARKWAY, SUITE 200, P.O. BOX 25348
OVERLAND PARK, KANSAS 66225
PHONE 913 / 345-2030
FAX 913 / 345-8027

JOHN D. NOVAK
PRESIDENT

January 25, 2001

Mr. Duane Schrag
Editor
Chanute Tribune
15 N. Evergreen
Chanute, KS 66720

Dear Mr. Schrag:

I have been provided a copy of a letter to the editor written by Mr. George E. Nettels, Jr., Chairman of Midwest Minerals, Inc.

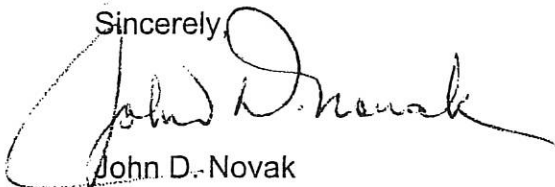
As president of Ash Grove Materials Corporation, we employ many in the state of Kansas through our various subsidiaries. Our parent corporation, Ash Grove Cement Company, is also a large employer in the state of Kansas with their cement plant in Chanute, Kansas.

As a business with strong ties to the state of Kansas, we want to provide our support to Mr. Nettels. We also believe that there is something inherently wrong when counties or public agencies employ taxpayer funds to compete with private industry. It appears as if a few of our public officials are losing perspective in terms of who is actually paying the way. Is it private industry with their tax dollars or the county that generates no tax funds but possibly could be chasing away tax-paying businesses because of their initiative to compete with business. Most counties aggressively pursue economic development initiatives to attract businesses in order to build their taxpayer base. What kind of message is Neosho County sending when they make the statement that if they decide to get into business to compete with you they will.

I am hoping that the reality of basic economics will prevail in Neosho County. Private business has a role, and the county has a role. Those roles should not compete. Surely common sense will prevail for the good of the county.

Thank you.

Sincerely,



John D. Novak

JDN:km

bcc: George Nettels, Jr., Steve Sloan, Mike Lutz

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

Date: February 19, 2001
By: Woody Moses, Managing Director,
Kansas Aggregate Producers' Association
Regarding: House Bill 2369
Before: The House Committee on Transportation

Good Afternoon Mr. Chairman and Members of the Committee:

My name is Edward R. (Woody) Moses, Managing Director of the Kansas Aggregate Producers' Association. The Kansas Aggregate Producers' Association is an industry wide trade association comprised of over 250 members located in all 165 legislative districts in this state, providing basic building materials to all Kansans. On behalf of our members, I am pleased to appear before you today in support of House Bill 2369, a measure that would prevent the sales of paving materials by local government.

This bill has been introduced to address a growing problem in the Kansas construction materials industry, the disappearance of markets. The advent and development of "home rule" has led to conflicting opinions about what local government can do in pursuit of the "public purpose". With many local governments liberally concluding the "public purpose" is served when they produce and sell paving materials. We think such an activity is essentially and ultimately bad public policy.

Generally, this is done, at least outwardly to save the taxpayer money, but usually the "law of unintended consequences" comes to bear; and the activity ends up costing the taxpayer more. Take, for example, taxpayers in Ft. Scott who are forced to pay for two asphalt plants rather than one or none. But, the law of unintended consequences goes even further by forcing all taxpayers in a sense to subsidize publicly owned paving material operations. This is because other units of government are required to pay more for the paving materials as a result of the loss of market.

For example, if a producer is making 1,000,000 tons of rock a year at a fixed cost of \$1,000,000 (\$1.00 per ton), loses 300,000 tons per year of market to local units, he must then charge \$1.42 per ton to cover costs. This cost is then passed on to other units of government, including the state through KDOT purchases. It is also interesting to note that the highest volume paving material consumers in Kansas, in other words, those which stand to save the most, (Douglas, Leavenworth, Sedgwick, Shawnee, and Wyandotte, and the Kansas Department of Transportation) have not established operations. Is this because they are financially sophisticated enough to discern the pitfalls? We believe so.

In closing, I would simply urge this committee to adopt HB 2369 for the following reasons:

1. It restores the traditional balance between the public and private sector,
2. It prevents the shifting of tax burden by one local unit of government to another, and
3. It provides a clear policy statement regarding governmental participation in the private sector.

I thank you for your time and attention and will be happy to respond to your questions.

House Transportation Committee
February 19, 2001
Attachment 4

Government vs. Private Business: Four Kansas Counties Enter the Rock Crushing Business

BY BOB REILLY

When the Wichita Southeast Kansas Transit Company decided it was time to relocate and expand its operations four years ago, officials in Parsons, Kan., knew they had a challenge on their hands.

The trucking company had been a strong economic presence in the community for years, employing 425 workers—150 of which worked in Parsons itself.

So, when other cities began offering enticements for Wichita Southeast to move its operations to their communities, the Parsons economic development machine roared to life.

Working with the company for nearly 18 months, city officials put together an impressive \$870,000 incentive package, including: a total tax abatement for five years, financing to move the company's computer system—and 8,000 tons of rock from the Labette County-owned rock crushing operation for a company parking lot.

Fast-forward a few years. Parsons officials were now working with a local developer on a 28-acre housing development. Again, as incentive to help the project along, they turned to Labette County—and not the local quarries—to supply crushed rock for the development's roads.

Labette County is not alone. Three other counties in southeastern Kansas—Allen, Neosho and Bourbon—have their own rock-crushing operations.

That in and of itself is not all that strange. Counties and state departments of transportation from across the country have at one time or another produced rock for their own road projects, said Valentin Tepordei, mineral commodity specialist for the U.S. Geological Survey.

Likewise, other state DOT's and federal government agencies often lease land out to private companies or local governments for mining.

The practice is so common that the U.S. Forest Service placed 73rd on the USGS' 1998 list of top U.S. crushed stone producers and 59th on the 1998 list of top aggregate producers, while the U.S. Bureau of Land Management placed 12th among the top aggregate producers for 1998.

But having a government entity produce rock in direct competition with pri-

ivate quarrying businesses is not so common—and has Kansas' aggregates industry up in arms.

For it is the local industry's assertion that Allen, Bourbon, Neosho and Labette counties produce too much capacity for their own needs and justify the existence of these crushing operations by giving it away free to nearby cities—and taking the money away from private aggregate companies.

"It's starting to eat away at us," said Edward Moses, managing director of the Kansas Aggregate Producers Association, who has four members—Ash Grove

"If we thought there was a benefit to the taxpayers, we wouldn't say a darn thing, because it'd be sour grapes on our part. But we're not convinced that's true," said Steve Sloan, vice president of Midwest Minerals, Inc. of Pittsburg, Kansas.

Aggregates, Nelson Quarries, Midwest Minerals and Hunt Midwest Mining—directly affected by the county operations.

"It's reaching crisis proportions."

ANYTHING YOU CAN DO, I CAN DO BETTER...

County-owned rock crushing operations are not exactly a new concept in southeastern Kansas, with a couple of these counties producing their own crushed rock since the 1930s and 1940s.

For county officials, the recent resurgence in the practice is simple: they say they can do it cheaper.

Take for example, Bourbon County, which entered into a 10-year, \$2.2 million lease and purchase agreement this past November to set up a quarry, rock crushing and asphalt mixing operation.

For years, the county's road and bridge

funding had been declining steadily, County Coordinator Jim Harris said, with 950 miles of gravel roads and 107 miles of blacktop roads still needing attention.

"So how do we fix our roads if we're getting less money, without raising taxes," Harris said.

Not helping matters was the continued price increases coming from the local quarries, which according to Harris, came in 25¢ a ton increments each of the past few years. By 1999, the county was paying \$4.35 a ton for road rock, with another 25¢ increase on the way.

"We kind of saw a pattern here and we were afraid that if we continued to get price increases, it was going to get to the position where we couldn't do hardly anything to our roads," Harris said.

In an October 1999 survey of 409 Bourbon County residents, 51 percent said the county should "operate its own quarry to save money on rock and asphalt." Twenty-nine percent disagreed and 18 percent had no opinion.

But Tom DeGonia, general manager of Ash Grove Aggregates, which does more business with Bourbon County than any of the other counties, said prices have hardly budged in the last few years.

Prices are currently hovering in the neighborhood of \$4.50 a ton for crushed rock, DeGonia said, which is about 50 percent cheaper than prices in the Kansas City region.

And in real dollar terms, those prices are cheaper now than they were 20 years ago, he said.

Yet, Harris insists the county can do it cheaper. In a December 1999 article in the *Tribune* newspaper, Harris estimated that 175,000 tons of crushed rock and 13,000 tons of asphalt would be needed annually to perform Bourbon County's already-scheduled road maintenance.

That is equivalent to 11.66 tons for every citizen in Bourbon County, Moses said, which is far above the national average.

Using an average purchase price of \$4.10 a ton, the county estimated it would cost \$717,500 to purchase that much crushed rock from local quarries.

As a comparison, the county said it could produce its own crushed rock for \$2.44 a ton, thereby saving \$1.66 a ton, or \$290,500 a year, the newspaper reported.

Likewise, by producing its own asphalt, the county expected to save \$6.87

and asked whether Labette County was improperly competing with private enterprise in furnishing crushed rock for economic development projects.

The attorney general noted that with the 1974 advent of home-rule powers in Kansas, "counties are no longer limited to performing only such acts as the legislature expressly authorizes, but enjoy broad power to determine their local affairs."

According to Moses, home-rule powers strictly limit a county's taxing authority, thereby giving them much greater discretion in running county operations.

In either case, it doesn't help Kansas' aggregates industry.

"A county may furnish crushed rocks for parking lots and streets pursuant to its home rule power if such action fulfills a public purpose and promotes the public welfare," Stovall responded.

That kind of wide latitude bothers Sloan, who noted that almost any kind of construction or maintenance project could fall under that definition.

And legislative attempts to bring attention to these practices have also fallen short.

State Senate Bill 561, which would have required that any county-expensed courthouse, jail or bridge project that exceeded \$100,000 be put out for bid, died during the 2000 session, Moses said.

The Kansas Aggregates Producers Association offered an amendment to that bill requiring that any \$100,000-plus county project which leads to direct competition with a local business, must first be subject to both a public hearing and a standardized cost-benefit analysis.

Moses intends to pursue that law during the next legislative session.

SETTING A PRECEDENT?

NSA's vice president of marketing, Lawrence Quinlivan, and its vice president of operations, David Thomey, said their members haven't complained about having similar competition problems with government-operated crushing operations.

"That is fairly unusual. One, the cost of getting into business is not small, I mean there's a heavy capital investment needed for getting into the quarrying business," said Quinlivan. "And the environmental laws are the same for all of us, getting a site and getting the community involved takes a lot of time—it's not an easy business."

When it came to regulations, Bourbon County had a few bumps on its road to the quarrying business. The county failed to initially register or license its quarry with the state conservation commission and Harris admitted the site had a few minor MSHA violations.

Quinlivan and Thomey agreed with their Kansas counterparts that the cost estimates coming from the county sounded unrealistic.

"As a taxpayer, I would be opposed to it, because I think the private sector could do it more efficiently," Quinlivan said.

FEDERAL LANDS OPEN TO MINING

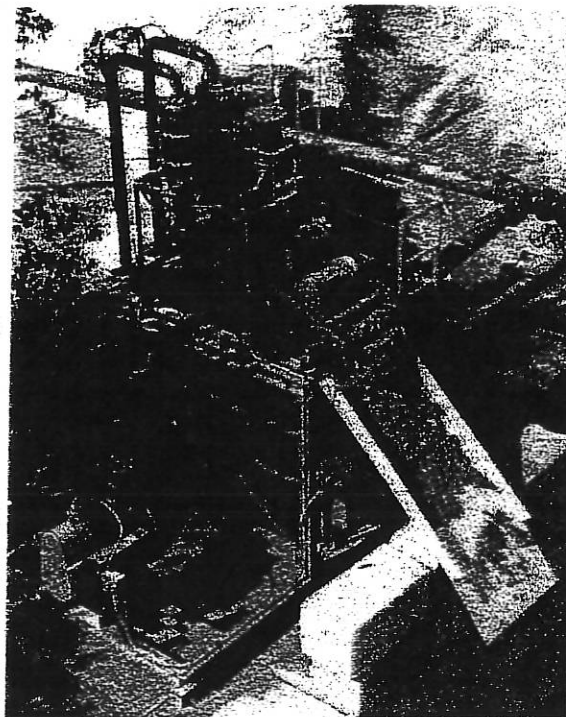
As mentioned before, those four Kansas counties don't have the playing field to themselves, since the federal government often leases land out to private companies or local governments for mining.

There are federally administered lands in 19 states where mining sites may be located, including: Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

The U.S. Bureau of Land Management manages the surface of public lands and the U.S. Forest Service manages the surface of the National Forest System lands. Areas off-limits to mining include national parks, national monuments, Indian reservations and wildlife protection areas.

"We used to produce crushed rock for our own road construction, but we don't do much of that anymore," said Durga Rimal, mineral materials senior specialist for the U.S. Bureau of Land Management.

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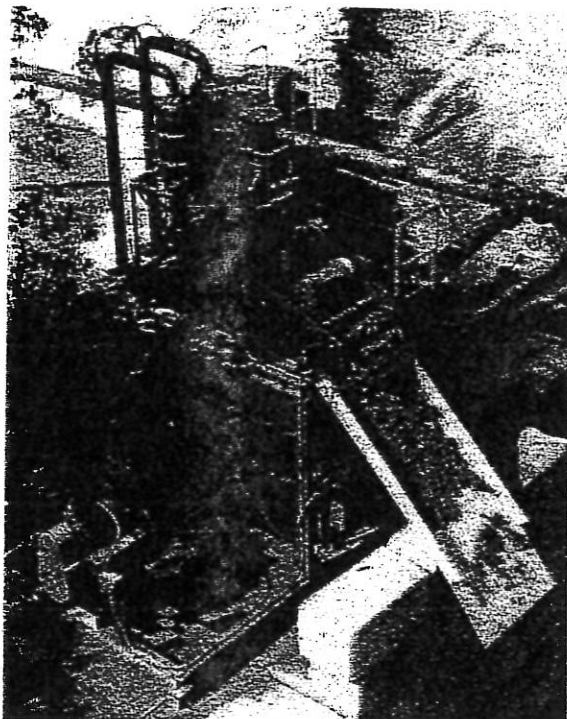
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The BLM sells such mineral materials to the public at fair market value—but also gives them free to states, counties, or other government entities for public projects.

Mike Greeley of the U.S. Forest Service said a small amount of materials are still produced in-house, including rip-rap for river stabilization and materials for road construction.

Neither Rimal nor Greeley could detail how many mining sites are currently

operating on BLM or forest service lands.

However, Greeley said about 9.7 million short tons of crushed stone and sand and gravel were produced on forest service lands in 1998, while Rimal noted that 11.7 million cubic yards of mineral materials were produced for the BLM in 1999—at a value of \$9.5 million.

Similar operations exist at the state level.

Lon Ingram, chief of the Bureau of Materials and Research for the Kansas DOT, said many states identify aggregate resources, lease the property mineral rights and then when they let a project, make the land available for contractors to use the material.

Although the Kansas DOT has gone so far as to identify the state's aggregate resources, they've never taken the additional step of leasing the property.

"We have a hard enough time keeping up with what we're supposed to be doing, let alone running a crushing operation and things like that," Ingram said.

THE DEBATE GOES ON

Moses said he doesn't dispute that some counties need to produce their own crushed rock, noting there are some areas of the state that can't be serviced by the industry, given they're too remote or their volumes aren't high enough.

But the concern with Allen, Bourbon, Neosho and Labette counties is that they produce too much capacity for their own needs and that some of them justify the existence of these crushing operations by giving it away free to nearby cities.

And local aggregate operations are getting more vocal with their frustration.

Once the CPA firm's report comes back, Moses hopes to develop a pricing model that accurately reflects the costs of the county crushing operations. Using that, his first step will be to approach the legislature and push them to adopt his public hearing law. Secondly, he hopes to convince the counties and the general public that while they are justified in wanting to save taxpayers' money, they've latched onto the wrong solution.

McBride, for his part, admits Labette County is hurting the local quarries when it gives away crushed rock for local projects, but stressed the importance of economic development in attracting business.

"I just felt it was one area where we could help and not really be a big dollar investment as far as the county was concerned," McBride said. "That rock was just going to lay there."

Harris too said the local aggregate industry is justified in their concern about the competition, but added: "We don't want to hurt their business, we just want to improve our road system at affordable prices to our taxpayers."

"If we thought there was a benefit to the taxpayers, we wouldn't say a thing, because it would be sour grapes on our part," said Sloan. "But we're just not convinced that's true." ▲

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Officials want legal roadblock removed

By Michael Shead
Tribune Staff Writer

Bourbon County Commissioners are asking legislators to change a state law to help pave the way for businesses and the public.

In a letter dated Sept. 8, commissioners requested a state law be changed to allow government agencies to sell road materials to private entities. Both the city of Fort Scott and Bourbon County have asphalt plants and have been approached by private residents about purchasing paving materials.

Copies of the letter were addressed to Sen. Robert Tyson, R-Parker, Sen. Jim Barone, D-Frontenac, and Rep. Andrew Howell, R-Fort Scott.

The letter said Se-Kan Asphalt Services in Gas City had contacted the city of Fort Scott about selling asphalt to private entities.

According to the letter, commissioners checked with an attorney

and were advised that "any material sold must be to another governmental agency and must be declared for a public use."



Judy

The letter is the commission's answer to a request for the county to make efforts to change a law preventing individuals or companies from purchasing road

materials from governmental agencies — even when no private company produces the products within the county.

"I need to see why that law is in place," Tyson said.

He said that, in situations like this, he is in favor of allowing private citizens to buy road materials as long as it is not at the expense of

(Continued from Page 1)

or subsidized by taxpayers.

"I still wonder if there is a way to make this law work," Howell said.

He said he is philosophically opposed to situations that place governmental agencies in competition with private businesses, but, without such businesses in the county, he is open to the idea.

Barone said he is glad commissioners sent the letter.

"I'd certainly support a change to the law as they requested," he said. "If there is no other commercial asphalt, the county ought to be able to sell to private (citizens)."

He said he would prefer law that referred to mileage rather than county lines so businesses near county lines are not affected.

For now, legislators are looking at law books to see if there is a way to accommodate people and not compete with private enterprises.

Barone said he would bring the issue up during the next legislative session. The Kansas Legislature will reconvene in early January.

The commissioner's letter was the result of a request from Fort Scott business man Bob Tuchscherer.

During the Aug. 25 commission meeting, Tuchscherer spoke with commissioners about buying asphalt.

"If I can't utilize what is in Bourbon County then that is wrong," Tuchscherer said. "You have an asphalt plant that I'm part owner in and I want to be able to use it. I'm paying taxes and taxpayers are part owners, right?"

At Tuchscherer's suggestion the commission agreed to write letters to legislators.

Commissioner Fred Judy liked the suggested change, but said he would not approve if there was a private asphalt company within the county.

"If there was one (asphalt company) in the county, that'd be a different story," he said.

Bourbon County Clerk Barbara Wood said the letter was mailed Aug. 25.

(Continued on Page 2)

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Testimony

By the Kansas Contractors Association before the House Transportation

Committee regarding County Contracts---H 2369

February 19, 2001

Mr. Chairman and members of the House Transportation Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I want to thank you for allowing me to testify in support of House Bill 2369. This bill goes to the heart of matters that have concerned our organization since 1917 when many of laws were formulated pertaining to governmental entities contracting for bid or doing work with their own forces.

As you easily can understand, our organization believes public works projects are done best by the private sector and not with government forces. The taxpaying public has the right to have its funds spent in the most efficient and economical manner possible on all public work projects. And we believe that is done through the private sector which pays taxes to the county.

When counties provide paving materials to the public or other governmental Entities, they are getting into the construction arena. Our association believes the Public loses when paving materials are provided without benefit of the public bid process. With public bids, the public obtains the service of competent contractors, the quality of the work or paving materials is bonded and the final costs of the materials or work is known and guaranteed. Unfortunately when the county does work or provides the materials, they usually have less expertise since they don't do that kind of work all of the time. There is little oversight and if there happens to be a flaw in the project, the county forces have to do it again with the same costs incurred for a second time whereas when a contractor makes a mistake...the contractor has to do it again without any additional costs to the county.

Also, counties have a tax exempt status and don't pay taxes on the equipment they have and use whereas the private industry does. Unfortunately when the government gets involved in construction, they buy machinery that is used for only a short period of time each year which costs the county more than if they would just contract the work and have it done by the private sector.

For these and other reasons, we support House Bill 2369. I would be happy to answer your questions.

Testimony

Before the House Transportation Committee
Regarding county sales of paving materials and
Services. House Bill 2369

Mister Chairman and members of the House Transportation Committee:

I am Orville (Butch) Spray, Chairman of Venture Corporation.

Venture Corporation is a prime contractor, specializing in asphalt paving.

The question is, should the counties be allowed to sell asphalt mix, crushed stone, etc to other governmental agencies or private annuities. The answer is no. The real question is should counties or any governmental agency even owns the tools of production. The answer is no. Our nation was founded on capitalism, an economic system characterized by private or corporate ownership of the tools of production in a competitive & free market. Economic systems, which support government ownership, have never worked and will never work. I believe we all know why. It's called incentive and the ability to "Meet a payroll" in a free and competitive

market.

If a governmental or private annuity hires or contracts with a reputable qualified contractor or supplier they will receive a superior product at a reasonable cost. The contractor is subject to a real or implied warranty for his work. The contractor is also subject to all of the laws, taxes, safety, & Insurance requirements and legal remedies available to the owner.

In addition, I know of no governmental agency that has the equipment, knowledge, experience or technology to produce a quality product. I know of no governmental agency that uses G.A.A.P. to even know their true cost. This could easily lead to the taxpayer subsidizing the work.

You may hear there is no contractor or supplier close. You may hear their price is too high. You may hear this is no different than the municipality furnishing fire and police protection. Ladies & Gentlemen, under close scrutiny none of these arguments will sustain.

I have submitted severe articles related to this subject for your consideration. I will only mention one. The U.S. Department of Housing and Urban Development ran a detailed comparison of municipal and private service delivery. In 7 of 8 services the private delivery was considerably more economic, this included asphalt paving.

To be honest, the asphalt paving industry reputation is tarnished by

the product produced by many counties because of its high failure rate.

It is difficult for the general public to differentiate between their product and the superior hot-mix pavement.

I will leave you with a thought that is applicable. A public works director for a local county was addressing the county commissioners and made the following statement “ We have received a price from a stripping contractor (for stripping county roads) for less than what we could do it for, so we can delay purchasing our new stripping machine for another year.”

Our entire industry urges you to support House Bill No. 2369



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6-3

We Can Lower Local Taxes

ARTICLE
Phoenix

As pressures mount on municipal budgets, Phoenix and other cities are proving that taxpayer dollars can be saved even as more and better services are provided

"Reprinted with permission from the September, 1985 Reader's Digest. Copyright © 1985 by the Reader's Digest Assn., Inc."

BY RANDY FITZGERALD

TWENTY MILES southeast of Phoenix, a new waste-water treatment plant is nearing completion in the fast-growing city of Chandler. Because it will be a privately owned and operated facility—the first in the nation to serve a city this size—taxpayers will save about \$1 million a year.

• In neighboring Mesa, janitorial services were turned over to a private contractor in 1981. Now the city's buildings are kept pristine for \$250,000 less than when the city performed the service.

• In Scottsdale, adjoining Phoenix, the first U.S. city to use a private company for fire protection boasts of better-than-average fire-response times, at less than half the cost in cities of comparable size.

Across Arizona, rapid growth and tight budgets have stimulated new approaches to providing local government services, with "privatization"—contracting out to the private sector—as the centerpiece. Nowhere have changes been more rapid or far-reaching than in Phoenix, the ninth-largest city in the United States. Its innovations, which produce more services with fewer resources, are apparent in subtle but significant ways:

In new residential construction, for example, a single city inspector checks for structural safety, compliance with electrical and plumbing standards, soundness of mechanical systems, and adherence to the zoning code—tasks which in many cities involve four or more inspec-

tors. This consolidation alone saves the city over \$1 million annually.

In the city's Human Resources Department, a middle manager takes daily inventory of her productivity. She oversees dozens of employees, yet her salary is not based solely on that fact, or on how large her budget is; her pay is also tied to a Performance Achievement Program, rewarding her for improved performance and provision of services at the lowest possible cost.

A pivotal moment in the Phoenix success story came in 1978, in the wake of California's Proposition 13 and a nationwide tax revolt. Faced with the dilemma of trimming costs without curtailing services, the city council approved a call for bids from private companies to collect city refuse.

"Are you going to compare their bids with your own costs?" then-Mayor Margaret Hance asked Ron Jensen, director of the city's Department of Public Works.

"Yes, and we will bid too," Jensen replied offhandedly.

When the council meeting ended, Jensen realized that he had committed his department to compete with private contractors. Doubts began to surface. Could a large municipal agency ever outbid efficient private companies? After conferring with his staff, Jensen decided: Why not? In fact, why not use contracting out as a way to force city agencies to be more efficient?

To keep politics out of the bidding process, a city auditor examined the books of municipal departments, estimated equipment and labor costs, then prepared the city's sealed bids. Public Works lost to private contractors on the first four contracts let for trash collection in various parts of the city. But these setbacks only strengthened Jensen's resolve to make his department more productive.

Private-sector management techniques, new technology and other fine-tuning were added. Attrition and transfers reduced the number of sanitation employees by more than a third. But the biggest turnaround, says Jensen, came in employees' attitudes. "Before contracting out, there was little pressure on our department. We had nothing to compare our performance against; there were no real incentives. Now employees have been seized by a competitive spirit."

The result: last year Public Works outbid five contractors for the right to collect garbage in one section of the city, beating the next-lowest bidder by almost \$1 million a year. This will save taxpayers \$6.8 million over the life of the contract. "Morale among our employees skyrocketed," Jensen reports proudly. "We discovered that we can compete with the private sector."

Since 1978, Phoenix has placed 43 major contracts up for bid—for such tasks as landfill operation, street-median maintenance, water-meter repair, cleaning of municipal buildings, and bill processing. City departments have won 15; private companies have won 28. But the real winner has been the taxpayers—to the tune of some \$3 million a year.

For Phoenix, contracting out quickly became part of a larger program to streamline bureaucracy. The police department was able to keep costs down by replacing uniformed officers with lower-paid police aides on routine duties such as traffic-accident investigation, thereby permitting officers to spend more time patrolling high-crime areas. City departments are asked to see if they can finance new programs without new funds.

SOUTHWEST

ARTICLE 2

Ark. • Colo. • Kan. • N.M. • Okla. • Tex.

TRENDS IN THE REGION

Privatization Can Be Downgrade Vaccine

By Julie Carrick Dalton

While privatizing government services rarely enhances the credit ratings of debt issuers, it may redeem some municipalities in danger of rating downgrades, rating analysts said.

Movements to privatize have gained momentum across the country since the early 1990s, as governments find privatization can reduce labor costs by cutting unneeded jobs and reducing fringe benefits.

Especially in the Southwest, where unions are weaker, privatization faces little resistance and will probably increase, said Ken Gear, associate director at Standard & Poor's Corp.

When Tarrant County, Tex., privatized jail functions, the county did not save a substantial amount of money, nor has it improved its AA-plus rating from Standard & Poor's or its Aa1 from Moody's Investors Service. But services and efficiency of the jail improved, said Peter D'Erchia, a tax-based analyst with Standard & Poor's.

Although the county had been operating with about a \$23 million annual surplus, Standard & Poor's analysts noted a lack of cost-effective operations in jail management before

the privatization. The Corrections Department faces losing more revenue next month when the state cuts off payments for housing state prisoners in county jails, D'Erchia said.

"There are several counties who will have fairly large holes in their budgets," D'Erchia said. Tarrant County's move to privatize was a defensive ma-

Poe. Bids for the contract are due Aug. 25 and a selection will be made soon after, he said.

Poe said he visited several similar convention facilities where privatizing had increased revenue. The Colorado Convention Complex in Denver saw \$700,000 in savings last year as a result of privatizing, Poe said.

Conroe resulted in a consolidated staff and smoother operations.

"We were 25% to 30% overstaffed, but when you're in a public office

it's hard to cut jobs and then try to run for office again and expect to win. This took it out of the political limelight," Thorton said.

"We were tarred and feathered locally, but nationally, we won awards," Thornton said, referring to the 1994 award given by the National Council for Public-Private Partnerships. The Hospital Authority now is privatizing its emergency medical services, Thornton said.

Based on the hospital's financial success, which resulted in \$29 million of initial savings, Thornton said he is optimistic that the emergency service privatization will save taxpayers \$2 million to \$3 million per year.

"I think government should be a purchaser of services. Private industry is a lot more creative and resourceful," Thornton said.

'There are several counties who will have fairly large holes in their budgets. ... If they didn't privatize, the rating would go down,' says S&P's Peter D'Erchia.

neuver and may have prevented a rating downgrade, he said.

D'Erchia said that in some rare instances privatizing can boost ratings.

"But it happens more often in the reverse," D'Erchia said. "If they didn't privatize, the rating would go down. It's about at least maintaining a rating."

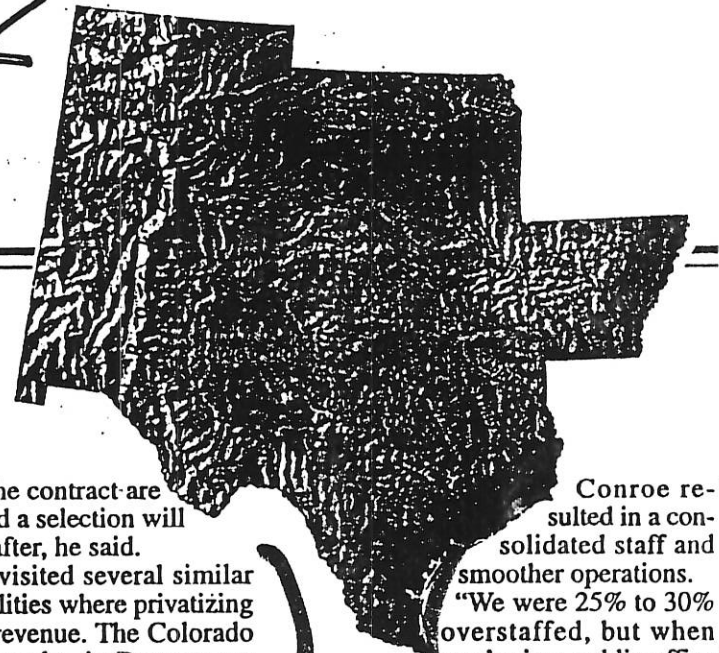
Dallas is soliciting bids to privatize the Dallas Convention Center, which has been losing money consistently, said Convention Center director Frank

Privatizing would not affect the \$200 million in revenue-backed outstanding debt issued on behalf of the Convention Center, Poe said. But it would stem the tide of red ink; during the last fiscal year, the convention center lost \$1.1 million on revenue of \$3.5 million.

Ken Thornton, executive director of the Montgomery County, Tex., Hospital Authority, said the decision to privatize the Conroe Medical Center in

MARKET

Pickup in Activity Expected to Follow



Southwest Invisible Supply

issuer and purpose	Amount	Approval status
Arkansas	\$200	Approved
State Development		

ARTICLE 3

HUD

(1)



U.S. Department of Housing and Urban Development
Office of Policy Development and Research

Delivering Municipal Services Efficiently

A Comparison of Municipal
and Private Service Delivery

Summary

EXHIBIT 7: Results of Cost Comparisons Holding Other Factors Constant

Service	Percent Difference	Scale	Variable Controlled For			Percent of total cost explained
	$\frac{MU-CO}{CO}$		Level of Service	Quality	Condition	
Street Cleaning	43%	Curb miles cleaned/year*	Times cleaned per year	Rating -- block faces	Retail sales/curb mile	86%
Janitorial	73%	Square feet in buildings to clean*	Standard time per square foot	Quality rating -- cleanliness	NA	92%
Refuse Collection (residential)	28-42%	Cubic yards of refuse collected	**Refuse/household	Quality rating (lids replaced, etc.)	Population/curb mile*	98%
Payroll	None	# of checks issued*	% salaried	% with errors	NA	83%
Traffic Signal	56%	# of intersections maintained*	# preventive maintenance visits/intersection/year*	# of items in need of repair	NA	93%
Asphalt Overlay Construction	96%	Tons of asphalt laid*	% with reinforcing material*	Rating (cracks, etc.)	NA	93%
Turf Maintenance	40%	Acres mowed*	# of activities*	Rating -- visual	% of area with no problems*	83%
Street Tree Maintenance	37%	# of tree trimming visits*	Weighted level of pruning*	Rating -- by arborist	# of activities performed	39%

*Variable is significantly related to total cost.
 **All cities studied had once a week curb or alley refuse collection.

ARTICLE 4

Folks get their tax \$\$ back in best-run town in America

City Clerk, Administrator May

708

Crestwood, Ill., is the best-run town in America — because it operates just like a business.

That's what residents of the 12,000-population town say about their home, which is run so efficiently that this year citizens are receiving a 26 percent rebate on their property taxes.

What's more, the town is so well-off that residents over age 55 get free household repairs and their shrubs cut for free!

The super-efficient government may soon be able to totally eliminate property taxes!

"I've had my business in Crestwood for eight years and it's the best town in the U.S.," declared restaurant owner Joe Cistaro.

"Mayor Chester Stranczek's philosophy is simple — he contracts out everything.

"And our police are under or-

Real friends are those who see heart to heart even when they don't see eye to eye. — Herm Albright



HAPPY town of Crestwood, Ill., has a secret.

ders not to clog our court system by chasing after speeders hoping to get a \$50 fine. They're told to give speeders a severe warning and then get on with the business of fighting serious crime. So there is almost no crime!"

Stranczek, 64 — a trucking company owner — has been Mayor of this town 25 miles south of Chicago since 1969.

"Businesses don't become successful by running at a loss," he said.

"When I became Mayor we scrapped the huge Public Works Department that handled water

main leaks, etc. We simply contracted these problems out to private contractors.

"So instead of having a bunch of workers sitting around when it was raining, collecting wages, insurance and medical benefits, plus machinery like backhoes rusting, we hired firms to do the work. The savings are fantastic.

"The same goes for book-keeping. We simply pay an auditor \$8,000 a year to do the work. Savings: maybe \$35,000 a year."

Thanks to efficient government, there's plenty of money to pay for needed services, said Mayor Stranczek.

"We have only three full-time policemen. But we have 40 part-time officers who live in Crestwood and put in 10 to 12 hours a week patrolling the streets. As a result we have one of the safest towns in America.

"This year alone we've given our taxpayers a \$1 million rebate. When you pay your taxes in Crestwood, you get a 26 percent rebate.

"And because of the sales taxes we're getting from new busi-



TOWNSPEOPLE CHEER Mayor Chester Stranczek after the city gave them a \$1 million tax refund.

nesses moving into this desirable area, we hope that within four years, homeowners will have NO property taxes!"

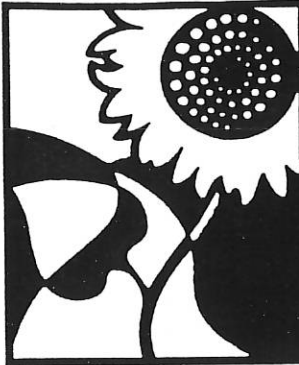
Incredibly, Crestwood has just 17 full-time employees, compared to a nearby town of the same population that has about 150 workers.

"Our budget is \$2 million a

year while a town of similar size, with 12,000 people, might have a budget of \$10 million!" said City Director Frank Gassmere.

Added Mayor Stranczek: "Folks are happy here — and I intend to keep them that way."

— JAMES McCANDLISH



KUTC Newsletter

Spring 1995

A Local Technical Assistance Program of The University of Kansas Transportation Center
In cooperation with Kansas Department of Transportation and Federal Highway Administration

Issue on public works management

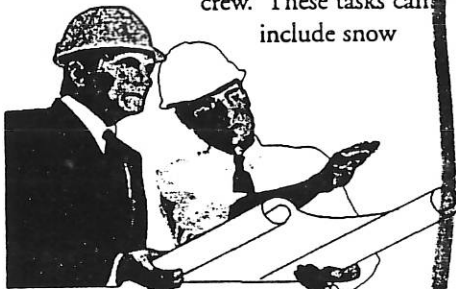
JUN 20 1995

Public/Private Works

Contracting with private companies for some of your public works services can make good sense.

by Teresa Blake

Privatizing can allow public agencies to get more work done when crews are stretched to the maximum. Privatizing is the process of hiring private contractors to perform certain activities normally done by the agency's crew. These tasks can include snow



removal, signing, road-marking, installing traffic control devices, pothole repair, bridge painting, street sweeping, and bridge inspection.

Today privatizing is becoming common in all levels of government in the United States, but most is carried out at the local level.

Privatizing on the Rise

Several factors have led to an increase in privatizing. Development has spurred the use of private contractors, especially in areas where there is rapid urban or suburban growth. Occupational safety and environmental regulations have also helped encourage privatizing—using private contracts helps reduce some of the agency's own paperwork involved with these regulations.

Benefits to Local Agencies

Privatizing can save you money. In a recent *Better Roads* survey of agencies that have privatized some of their services, 25.9% said that contracting the services costs the same as their in-house crews and 38.7% reported reduced costs. The main reasons for savings are reduced costs both for labor and equipment ownership or leasing. This is especially true in cases where jobs are done only occasionally. Contract maintenance also reduces in-house liability.

In the *Better Roads* survey, 93.8% of the counties surveyed rated the privatized services as "good." State and city engineers were also pleased. Around 66.5% of the state engineers and 52.4% of the city engineers rated their contracted work as good. Most of the contracted work was for bridge painting and chipseal/surface treatments.

Be Choosy

Privatizing does have a few drawbacks you should be aware of. You will not have the same measure of control over day-to-day operations that you would normally have with your own in-house crew. Some contractors, if left unsupervised, will take short-cuts and use inferior materials. Accepting the lowest bid can mean sacrificing quality for cost. Some agencies have been displeased with poor work, delays, and a few,

In this Issue

- Privatizing and Partnering Overview
A Contractor's View
- Buying or Leasing
- Skills for Providing Constructive Criticism
- FHWA's "Red Light Running" Campaign
- Risk Management in Public Works
- Keeping Good Employees from Jumping Ship
- Ten Commandments of Political Engineering
- Results of KUTC Reader Survey
- KDOT Korner
State Level Partnering
KARS Data Now on Disk
- Leg Up Column: Bicycling and Liability
- Regular Features:
Video Reviews
Calendar
Free KUTC Publications and Videos
KUTC Contacts

S-t-r-e-t-c-h Your Road Maintenance Budget—Go Private

by Don Walker
President, Kentucky Crushed Stone
Association

Using private contractors, you can fix your roads for less money—it's that simple.

Knowing that I'm the president of a private industry association, you'd expect that to be my view. But it's not mine alone. City and county engineers around the state agree that for road maintenance jobs other than fixing potholes and mowing, private contractors can do more for less.

Nationally (and not just in Kentucky) the trend is toward privatization. Most state transportation agencies use private firms for some kind of road work. Essex County in Massachusetts recently privatized its highway maintenance work, realizing an immediate savings of \$12 million and an annualized savings of \$7 million.

But why shouldn't a local government do its own road work? First of all, road maintenance equipment such as rollers and pavers are expensive to buy—\$100,000 to \$200,000. If your city or county cannot keep this equipment in constant use for several months out of the year, it's not economical for you to purchase it. It just does not make sense to have equipment worth hundreds of thousands of dollars sitting in a storage yard collecting dust and decreasing in value.

Be aware that maintaining this equipment carries a high price tag, too—especially if it's older.

Private Firms Save Money for Bowling Green

William B. Hays, Jr., the public works director and city engineer in Bowling Green, cited cost savings as the primary reason his city contracts out most paving work.

Hays said that if Bowling Green did its own paving, it would need, first, to buy enough trucks to haul asphalt. It would also need a tight agreement with

the asphalt plant to get those trucks loaded before others, to save the drivers and the paving crew a potentially long wait. Finally, the city would need to buy a paver, several rollers and probably a grader—plus a great deal of support equipment. (The scenario is similar for concrete work.)

There was no way we could buy that kind of equipment and keep it busy.

William B. Hays, Jr.
City Engineer, Bowling Green, Ky.

"Unless a city or county government is geared up to lay pavement four or five months at a time nonstop, and has a very tight agreement with the asphalt plant, government is going to be hard pressed to do the work at the same economy that a contractor can," Hays said.

Bowling Green recently awarded the job of painting center lines to a private firm, after years of having city employees do it.

"When we looked at the cost of replacing the striper, it was so expensive and so time-consuming in labor that it was cheaper for us to hire private," Hays said. "It turned out that we had a couple of local companies that had just bought new equipment. There was no way we could buy that kind of equipment and keep it busy."

Personnel Costs are Lower for Private Firms

The cost of running equipment is not just in the equipment itself—there's cost of employees, too. Finding qualified operators is not easy, and giving a state-of-the-art grader to an inexperienced operator will jeopardize the equipment and the quality of the job done.

Hiring a private firm means you have workers on the payroll only when

they are needed—it's like turning a tap on, then off again. The headaches about taxes, overhead, personnel conflicts, and insurance are all dealt with by the private contractor.

Because private firms can be more flexible than government (about hiring seasonal labor, for example), private businesses generally have lower costs per employee, too, in both payroll and insurance.

Paducah's director of public works, David Harvell, said that in his area, private firms can do paving work for about a third of what it would cost him using city employees.

Hire Experts

Just as important, he added, is that by hiring a private firm, he can hire special expertise. His municipal workers do "a little bit of everything. But the private contractors' sole reason for existing is to lay pavement, so they become professional in the area," he stated.

One final point: hiring a private firm doesn't mean hiring just anyone who owns a piece of equipment. You want to use contractors who can do the job—and do it right. Hire a firm that uses the proper equipment, run by qualified operators, and which has the financial strength to see a job through.

Following this guideline, you can have confidence that by hiring a private contractor to do your road maintenance work, you are getting high-quality roads for less money. In these days of tight budgets, unfunded federal mandates, and ever-increasing competition for spending priorities, a private contractor can help you make your budget work harder. That's good for everyone.

Adapted with permission from *The Link*, Kentucky Transportation Center, Vol. 10, No. 2, October 1994.

NOT CONTRACTORS

ARTICLE 5-A OREGONIANS for COST-EFFECTIVE GOVERNMENT

P.O. Box 384 • Lake Oswego, OR 97034 • (503) 636-4003

January 5, 1986

2

COST-EFFECTIVE GOVERNMENT BY CONTRACTING WITH PRIVATE BUSINESS

As costs of government continue to rise in many areas, causing a taxpayer's revolt and threatening the economy as well as priority programs, evidence rolls in to show that cost-effective alternatives are available. We can have the services we need at a price we can afford.

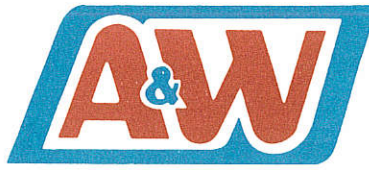
One such alternative is called privatization. When government turns to private firms for what they do best, either by outright ownership or by contracting, we taxpayers can be the big winners. At the same time, we can give a boost to the innovative and competitive private firms upon which the future of our economy depends.

Jackson County, Oregon, saved \$118,000 in its first contract for Crash Fire Rescue service at the city-county airport, one of many steps taken in the last four years to increase the cost-effectiveness of county services in the face of major cuts in timber revenues. Salem, Oregon, exposes the city's in-house staff to competition from private firms. If a service can be done more cost-effectively by contract, the private firm wins the bid. Over \$2 million in services, such as building security, janitor service and park maintenance, were contracted-out in 1985, in addition to \$26 million for construction of major public facilities.

Portland contracts-out for food service in its new jail, for parking garage management and security for special events, for youth center management and for other services, in addition to public works projects. Tualatin contracts for police service and thus can choose between adjacent counties for the quality and cost of service it will purchase. North Bend and other school districts are served by private school buses. Phoenix, Arizona, saves 54% by contracting for dial-a-ride taxis as a substitute for large bus service on Sundays and in low density areas. A recent study in matched California cities, prepared for the U.S. Department of Housing and Urban Development, revealed that cities could expect to save 42% by contracting-out janitorial service, 29% on contracted refuse collection, 36% on traffic signal maintenance, 30% on street cleaning and as much as 49% by contracting with private firms for asphalt street paving.

Interviews reveal that governments who use contracting successfully, while remaining accountable to the taxpayers for quality as well as for costs - take four essential steps. They discover (1) the real costs of providing the service in-house (cost allocation to reveal both direct and indirect costs), so that public officials have adequate financial information to set priorities among service levels and to make contracting decisions.

To hold officials, public employees and contractors accountable for quality and for bottom line costs, successful officials (2) develop clear specifications, (3) assign monitoring responsibility to accountable public employees, and require performance bonds and other contract provisions to assure specifications are met. With these assurances in place, they (4) assure choice and competition between service providers, public and private. That's how they provide the services taxpayers want at a price we can afford.



ANDREWS ASPHALT & CONSTRUCTION, INC.

Testimony

By Andrews Asphalt & Construction, Inc.

Before the House Transportation Committee
Regarding county sales of paving materials and
Services. House Bill 2369

Mister Chairman and members of the House Transportation Committee:

I am R. J. Koreen, Vice President and Business Manager for Andrews Asphalt & Construction, Inc. located here in Topeka, Kansas. We are a small paving contractor and an asphalt producer servicing northeast Kansas. I represent our 40 seasonal employees, 6 full-time employees and, I would like to think, the small private business enterprises in the great state of Kansas.

I have come here to speak in support of Representative Bob Grant's House Bill No. 2369, concerning the participation of a governing, political, and taxing authority in the free market of paving services and asphalt production.

We, as a company, have been concerned with this situation for many years and have recently addressed our concerns with our local county authorities.

Three years ago, I returned from lunch to find a county crew with the "county paving machine" and three truck loads of asphalt and eight employees lined up alongside NW 25th Street- 200 feet from our plant gate. The county was putting a leveling course on the top of the paved road.

House Transportation Committee
February 19, 2001
Attachment 7

PHONE
785-232-0188



P.O Box 750015
TOPEKA, KANSAS 66675-0015



FAX
785-232-0122

Subsequent inquiry revealed the following information:

- 1.) The project was not put out for bid because the county needed to hold some projects to do with their new paver.
- 2.) The employees doing the work also do grass cutting, sign installation and other duties as assigned.
- 3.) The asphalt used was purchased from our competitor across town.
- 4.) The final result is not of the quality that we are held to by state, county or city inspectors.

Add to this, we as a private contractor, are subject to market forces of competition and financial survival. Our work has to be top quality or we won't survive. Our workers are trained in paving and only in paving. Our workers depend on the amount of work we bid and contract.

We bid all of the work that is available in order to keep our crews fully employed through the construction season.

I want to make this committee aware that we perform work within a 60+-mile radius of Topeka. We have traveled as far as Hiawatha and Atchison to do work. We bid the work on the parking lots and roads at the casinos against competitors located in the more immediate area. The bid process insured the lowest costs to the customer. My point is that, if there is work to bid some company will bid it, even if it is located out of the area.

When a taxing authority imposes itself in production or in providing a service that the private sector can do, they have advantages that are not afforded companies like ours. Their costs are grouped as part of the annual operations of the department and the income is always

shown separately as generated by the operation. There is no incentive to control or reduce costs. The operation is underwritten by the taxpayers.

Once equipment or real assets are acquired there can be no reason offered to not utilize them. Once in the budget, additions of other equipment become easier to justify and even becomes a necessary part of their budget.

A small example. The city, state and county send their trucks to our yard to buy asphalt. The trucks they drive are newer and shinier than the trucks we drive and we helped them to buy that new equipment with our taxes. Our company, as a taxpaying unit, paid over \$50,500 in property taxes alone last year. A cost that the county is not burdened with.

In summary, I submit, that it is not the city's, county's or state's business to be in the paving business; that the free market will draw private sector business, new or existing, to supply the needs of the market; and it is to the state's advantage to encourage and support the start up and growth of private enterprise in all areas within its borders.

We strongly urge your support of House Bill No. 2369 as it is written.

I will stand for questions . . . if you have any.



TESTIMONY
concerning House Bill No. 2369
re. County Sale of Paving Material, Services
House Transportation Committee

Presented by Randy Allen, Executive Director
Kansas Association of Counties
February 19, 2001

Mr. Chairman and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. I am here today to express concerns about House Bill No. 2369 as proposed. The bill would prohibit cities and counties from selling or otherwise providing various paving materials to any other city, county, private person or private entity.

It is our understanding that among the 105 Kansas counties, the vast majority of counties (as local policy decisions) do not routinely sell crushed rock or gravel or asphalt to other counties or to cities, and probably even fewer sell paving materials to private persons or private entities.

The underlying assumption in HB 2369 is that counties should not be in the business of selling paving materials - whether it is to other local governments or to private persons or entities. In reality, many of our counties and county officials probably agree with the philosophical assumption in the bill.

I caution the committee to look at some concerns about such a wide-sweeping bill, and offer the following concerns for your consideration:

- In the event of natural disasters, such as floods, a county's ability to respond to impacted public or private roadways or public facilities for reasons of public safety could be impeded, as counties would be barred from providing materials to restore a driving surface on anything not owned or controlled by the county.
- In areas of the state where there are no private quarries or private sources for counties to obtain paving materials within a reasonable driving distance, neighboring counties would be precluded from purchasing materials from nearby counties even though it might make economic sense to do so.
- Attorney General Opinion 97-67, in response to a request from Representative Ed McKechnie, indicated that "a county may furnish crushed rock for parking lots and streets pursuant to its home rule power if such action fulfills a public purpose and promotes the general welfare." The opinion referenced a policy of Labette County government to furnish rock for streets and parking lots in several industrial parks in the county as a way to promote the area for economic development. Since the public

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Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

House Transportation Committee
February 19, 2001
Attachment 8

purpose of economic development is furthered through the provision of rock, the Attorney General opined that it is legal to do so. In considering HB 2369, we urge the committee to refrain from barring counties from local policy decisions which advance a public purpose.

In conclusion, we realize that there are legitimate differences of opinion in defining the proper exercise of local home rule authority by counties. We urge the committee to be cautious in closing options to all 105 counties which may not be in the best interest of the general public. Perhaps an interim legislative study committee would be an appropriate forum for a thorough discussion of the public policy issues imbedded in HB 2369. For the above reasons stated, the Kansas Association of Counties urges the committee to table the bill and refer it to another process to better define the issues and as necessary, solutions to defined problems.

Thank you for this opportunity to comment on this bill.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

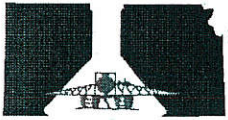
To: House Transportation Committee
From: Don Moler, Executive Director
Date: February 19, 2001
Re: Opposition to HB 2369

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2369. As I know you are all aware, one of the cornerstones of local government in Kansas is Constitutional Home Rule for cities. This power is not taken lightly by cities and we believe it is a very important aspect of the intergovernmental structure in this state. As a result, the League appears regularly whenever we believe there is a piece of legislation which will adversely impact Home Rule. Today I appear in opposition to HB 2369, a bill which clearly undermines local control and Constitutional Home Rule.

HB 2369 prohibits a city or county from selling or providing paving materials and services to other cities, counties, private persons or private entities. Not only does this totally preempt local control, it severely limits intergovernmental cooperation between local governments in the area of road and highway maintenance. Locally elected officials are in the best position to decide what is best for their communities and the state should not dictate or preempt their ability to do so. We urge the Committee to reject HB 2369 as unnecessary and an assault on the Constitutional Home Rule authority of cities in Kansas.

Again, thank you for the opportunity to appear today, and I would be happy to answer any questions the Committee may have.

KANSAS FERTILIZER AND CHEMICAL ASSOCIATION



KFCA IS
COMMITTED TO
PROFESSIONAL
DEVELOPMENT
AND BUSINESS
VIABILITY FOR
THE PLANT
NUTRIENT AND
CROP
PROTECTION
INDUSTRY IN
KANSAS.

Statement of the

Kansas Fertilizer and Chemical Association

Presented to the

House Transportation Committee

Representative Gary Hayzlett, Chairman

Regarding House Bill 2277

February 19, 2001

House Transportation Committee
February 19, 2001
Attachment 10

Chairman Hayzlett and members of the House Transportation Committee, my name is Doug Wareham and I serve as Vice President, Government Affairs for the Kansas Fertilizer and Chemical Association (KFCA). KFCA is the professional trade association for the state's plant nutrient and crop protection industry. KFCA's over 550 members are primarily retail dealers scattered across Kansas which sell and custom apply crop protection chemicals and fertilizers for Kansas producers. However, KFCA's membership also includes distribution firms, manufacturer representatives, equipment manufacturers and others who serve the industry.

I appear today in support of House Bill 2277, which establishes all-terrain vehicles as implements of husbandry and enables these vehicles to operate upon the right-of-way of any federal or state highway when used for agricultural purposes. The use of ATV's as utility vehicles by the commercial fertilizer and chemical industry is not new to Kansas. These vehicles have been used historically by retail fertilizer and ag chemical operations, agronomists, crop consultants and field scouts working on behalf of Kansas producers to identify soil fertility needs, inspect for plant diseases, take samples of insect infestations and have even been used to spot-apply crop protection chemicals. It is our expressed opinion that these vehicles have and will continue to serve as "implements of husbandry". House Bill 2277 simply recognizes that fact.

I also want to point out the growing use of ATV's by our industry for electronic data collection. Attached with my testimony are pictures of an ATV Soil Sampler utilized today by agricultural retailers and crop consultants to provide Kansas farmers with the most advanced crop production information available. The unit pictured, which depends upon an ATV for mobility includes a global position unit, data entry unit and soil sampling equipment. This is clearly not a recreational vehicle, but is instead precision farming equipment that should be classified as an "implement of husbandry".

In conclusion, I want to add that we do support the language in H.B. 2277, which allows ATV's to operate on right-of-ways when used for agricultural purposes. In an agricultural state such as Kansas, it simply makes no sense to treat these units any differently from other implements of husbandry.

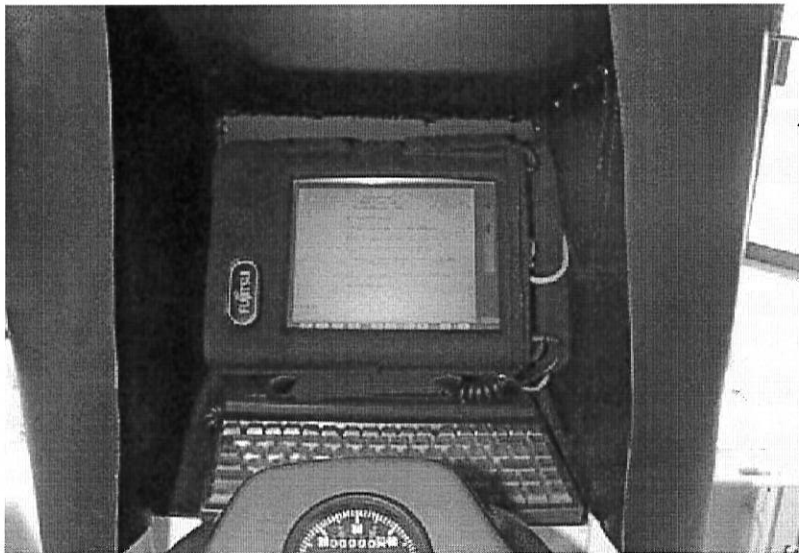
Thank you for the opportunity to appear in support of H.B. 2277 and I would be happy to answer questions at the appropriate time.



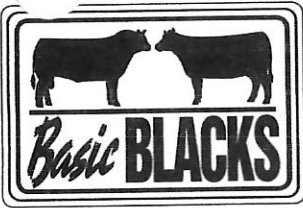
ATV Soil Sampler Front View



ATV Soil Sampler GPS Receiver Compartment



Inside View of Hood Above



February 19, 2001

OHLDE CATTLE CO.

1362 2nd Road
Palmer, KS 66962

To: Committee Members

Re: House Bill 2277

Ohlde Cattle Co. is a family owned and operated cow/calf business consisting of over 800 head of seedstock and commercial cows. We have been in the business for 25 years. The cattle are run on both native pasture and crop residue.

A large percentage of the farm /ranch is located along the highway in close proximity to the headquarters. ATVs are used in our farm/ranch enterprise many times per day to carry out daily activities such as checking cattle in the pastures and other farm related business. Horses are not used on this operation at all.

The use of ATVs is much more economical, as it saves time and money. For example, if the ATV has to be loaded into a pickup or trailer and then unloaded a quarter of a mile away to be used in the pasture it defeats the purpose. We find it necessary to driver ATVs on the "right of way" to perform daily operations in a timely and efficient manner. Without a doubt the use of ATVs saves us \$100 per day in labor, fuel and machinery cost.

Law enforcement has requested our assistance in getting cattle off the highway and into pastures, both day and night, even when we did not own the cattle. There use make it a lot easier for everyone, as ATVs are the most efficient way to remedy a situation such as this in a hurry. During the times of emergency as just described law enforcement officers do not have a problem with the use of ATVs. However, our employees or we have encountered some cases where we have been stopped for using the "right of way" during day-to-day operations.

Tim & Trudy Ohlde

785-692-4332

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House Transportation Committee
February 19, 2001
Attachment 11

PORK CHOP ACRES, INC.
2051 20TH ROAD
WASHINGTON, KANSAS 66968

TEL-(785)325-2568
FAX-(785)325-2419

February 18, 2001

Mr. Chairman and Members of the House Transportation Committee

Pork Chop Acres, Inc. is a family farm operation in Washington County. The farm is a diversified business, which includes growing over 2500 acres of wheat, soybeans, corn, grain sorghum, and sunflowers. In addition we also do some custom farming and have a swine operation.

Along with an extensive line of equipment, we own two ATV vehicles, also known as 4-wheelers. These have become a very essential piece of equipment as they provide an implement, which is very versatile. We use them for scouting crop fields; checking for insects, weeds, planting skips. Our ATV's are equipped to pull a sprayer to actually spot spray weed breaks in crops and fence rows. It is not feasible to load or unload the sprayer and ATV in our pickups making it necessary to use the county highways and roads to go to the fields.

We also use them exclusively while irrigating to get to the pivot engines. The only alternative to reach these center pivots is to walk. These 4-wheelers are also used to check cattle, drive cattle to and from forage areas, check fences, haul feed, as well as fencing supplies. At the hog units, they are used to provide transportation between buildings hauling supplies.

Production agriculture has changed immensely in the past few years. Our 4-wheeler's are used as pieces of equipment just as our tractors, combines, forage harvesters and other motor driven units. We drive between fields and farms just as we do the afore mentioned pieces of equipment.

The ATV's are used exclusively as vehicles of husbandry. I would appreciate your favorable consideration of making the necessary changes to reflect the primary use of ATV's in production agriculture today.

Thank you for allowing me to submit this testimony

Leo Schwartz
Pork Chop Acres, Inc.



House Transportation Committee
February 19, 2001
Attachment 12



Since 1894

To: The House Transportation Committee
Representative Gary Hayzlett, Chairman

From: Todd Johnson, Executive Secretary, Purebred Division

Subject: **Support for HB 2277 - Use of All-Terrain Vehicles for
Agricultural Purposes on Highway Right-of-Ways**

Date: February 19, 2001

Good afternoon Mr. Chairman and Committee members. I'm here on behalf of the Kansas Livestock Association to support HB 2277. As I understand this bill it classifies all-terrain vehicles (ATVs) as implements of husbandry and makes it legal to operate them on highway right-of-ways, when used for agricultural purposes.

In reviewing this bill, perhaps the thought has crossed your mind as to why an ATV would warrant classification as an implement of husbandry. We typically think of equipment such as tractors, fertilizer spreaders or other self-propelled farm machinery as "implements of husbandry," not an ATV. I feel the bill before us says volumes about the changing agriculture we face today and how farmers and ranchers use different tools and technology now, than they did just a few years ago. Thus the need to classify other items as "implements of husbandry."

It has become common place on today's farms and ranches to use ATVs for farm chores. There are some "true cowboys" who will claim an ATV can't replace a good horse, but I'll testify to one who wouldn't have it any other way, and that's my dad. Perhaps dad isn't a "true cowboy" any longer because he willfully admits our ATV is easier to stay under than his horse was, and much lower to the ground (age may have something to do with this). He'll also say it is easier to ride, doesn't get high headed and consumes much less feed. He has become quite adept at using it to sort cattle and admits is saves lots of steps in a day. I'd put him and his Kawasaki up against some "low skilled" Quarter Horses.

In all seriousness, at our farm in central Kansas, there are two ATVs equipped for most any farm chore. The front and back utility racks are complete with a sprayer for handling noxious weeds, an ax for breaking ice and a fence stretcher and extra wire for taking care of most fence problems. They truly are part of our farm implements and are used on a regular basis.

House Transportation Committee
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Attachment 13

Testimony Supporting HB 2277 - page 2

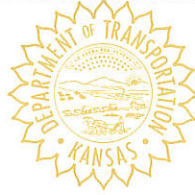
As farmers and ranchers try to stretch their labor force and dollars, it becomes necessary to implement cost and time saving practices. Using an ATV is one of those ways. When fields or pastures are not contiguous to the headquarters, it is more cost affective to use an ATV as a means of transportation than a pickup or car. Again, I'll use an example from our farm to demonstrate.

In situations where one of our family members goes to the field with a tractor and implement, we will leave an ATV with them so they have a means of transportation home if problems occur. This frees up our trucks for other chores and yet doesn't strand someone in a field with no transportation.

Because we live on a county highway it becomes necessary to operate the ATVs on the highway to get from our house to most fields. Again, this is something that occurs in the act of farming or ranching, and a situation many of our members face as well. You will hear from some of them today.

I would again like to offer our support of HB 2277 that would make it legal for ATVs to operate on the right-of-way of highways when used for agricultural purposes. Thank you for your time and favorable consideration of this bill.

STATE OF KANSAS



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E. Dean Carlson
Secretary of Transportation

Bill Graves
Governor

TESTIMONY BEFORE THE
HOUSE TRANSPORTATION COMMITTEE

REGARDING HOUSE BILL 2277
RELATING TO ALL-TERRAIN VEHICLES
USED FOR AGRICULTURAL PURPOSES

FEBRUARY 19, 2001

Mr. Chairman and Members of the Committee:

I am Ken Gudenkauf, Assistant Bureau Chief of Traffic Engineering. On behalf of the Department of Transportation, I am here to provide testimony to the committee regarding House Bill 2277. The proposed legislation amends K.S.A. 8-126 to include an all-terrain vehicle used for agricultural purposes as an implement of husbandry. The bill provides for the all-terrain vehicles to operate on federal and state highway right-of-way when used for agricultural purposes along with allowing their operating incidentally upon these same highways.

Our major concern is the safety of these vehicles operating incidentally on our highways. The all-terrain vehicle is rather unique and doesn't fit what normally is considered an implement of husbandry. Most implements of husbandry are large and fairly visible when operated on the highways. The visibility of the all-terrain vehicle creates a safety concern because of their very low profile.

All implements of husbandry are a safety concern when they are operating on our highways. The all-terrain vehicle is especially a concern because of the low profile and their inability to maintain normal operating speeds on most highways.

KDOT opposes the incidental operation of these vehicles on the state and federal highways.

House Transportation Committee
February 19, 2001
Attachment 14